

REMARKS

This Response is respectfully submitted in response to the Office Action rendered July 23, 2007. It is timely in view of the Petition for Extension of Time respectfully submitted concurrently herewith.

Claims 1-11 have been canceled without prejudice in order to expedite prosecution. Applicants reserve the right to re-submit the subject matter of claims 1-11 in a divisional application in the future. Claims 12-15 have been amended in order to specify certain embodiments of applicants' inventions. Claims 16-17 have been added to specify certain embodiments of applicants' inventions. Newly-added claims 16-17 find basis in the original claims as filed. No new matter has been added.

The compositions of applicants' invention relate to leave-on conditioning products for hair that impart lightness to the hair and that do not leave the hair with a dirty, oily or bad appearance. Surprisingly, applicants' combing/conditioning compositions permit the hair to have well-shaped, clean, untangled curls.

The Office Action of July 23, 2007 acknowledged applicants' election of species. It further objected to claims 6 and 11 due to certain typographical errors. As claims 6 and 11 have been canceled without prejudice, this objection is moot.

The Office Action of July 23, 2007 rejected claims 1-4, 8-9, 14 and 15 under 35 U.S.C. §102(b) as being anticipated by Newell et al. (U.S. Patent No. 5,968,486). The basis for this rejection was that:

With respect to claims 1-4 and 8-9, Newell discloses a composition for lightening and highlighting hair comprising polymeric thickeners such as methylcellulose, hydroxyethylcellulose, hydroxypropylmethylcellulose and carboxymethylcellulose, acrylic acid derivatives and these thickeners are present in an amount from about 0.1% to about 10%, cationic polymers such as polyquaternium-10 and polymer JR 30M, fatty alcohols such as lauryl alcohol, cationic surfactants such as sodium c14-c16 olefin sulfonate, silicones humectants and moisturizers. With respect to claims 14 and 15, Newell discloses a [sic] for hair lightening in the form of liquids, solutions, suspensions, dispersions, creams, gels, lotions, sols, mousse and the like. And composition further comprises fragrances, dyes, opacifiers, including fatty esters and latexes, pearlescing agents, dandruff control agents, hydrotropes, foam stabilizers, solubilizers, preservatives, water softening agents, and the like...[Office Action, p. 3]

Applicants respectfully request reconsideration of this rejection in view of the ensuing discussion.

Applicants respectfully point out that, as they have canceled without prejudice claims 1-4 and 8-9, they need not reply to this rejection vis-à-vis the canceled claims. As to claims 14 and 15, these claims depend from claim 12, which, as amended, requires the thickener to be polyether-1. Nowhere does Newell suggest or describe compositions containing polyether-1. As set forth in the Office Action, Newell requires cellulosic thickeners [Newell, col. 2, l. 62-67], which tend to impart a “heavy” appearance to the hair. Applicants respectfully submit that claims 12, 14 and 15, as amended, are not anticipated by the Newell patent and request reconsideration of the foregoing rejection.

The Office Action of July 23, 2007 rejected claims 1-6 and 8-15 under 35 U.S.C. §102(b) as being anticipated by Su (U.S. patent No. 6,287,545). The basis for this rejection was that “Su discloses hair conditioner compositions comprising a thickener...and cationic surfactant...” [Office Action, pp. 3-4] The Office Action further states that “Su discloses hair conditioner compositions comprising a cationic polymer like polyquaterniums...and a silicone...and also non-ionic, hydrophobic thickeners...” [Office Action, p. 5]. The Office Action further addresses claims 12 and 13, stating that “Su discloses a hair conditioner composition comprising a thickener agent at concentration of about 0.25%, fatty alcohols in a range of about 1%-10%, cationic polymer in a range of about 0.01%-3% and silicones in a range of about 0.1%-5%...” [Office Action, p. 4] With respect to claims 14 and 15, the Office Action states that “Su discloses a hair conditioner composition in the form of aqueous emulsions comprising quaternary ammonium salts, unctuous materials-particularly fatty alcohols, viscosity agents surfactants or emulsifiers...” [Office Action, p. 4]. Applicants respectfully request reconsideration of the foregoing rejection in view of Su in light of the following discussion.

Applicants respectfully point out that, as they have canceled without prejudice claims 1-11, they need not reply to this rejection vis-à-vis canceled claims 1-6 and 8-11. As to claims 12-15, claim 12 requires that the thickener is polyether-1. Nowhere does Su suggest or describe compositions containing polyether-1. Applicants respectfully submit that claims 12-15, as amended, are not anticipated by the Su patent and request reconsideration of the foregoing rejection.

The Office Action of July 23, 2007 rejected claims 1-10 under 35 U.S.C. §102(b) as being anticipated by Schmenger et al. Applicants respectfully submit that, as they have canceled without prejudice claims 1-10, this rejection is moot and that they need not respond to it substantively.

The Office Action of July 23, 2007 further rejected claims 1-6, 8-9 and 12-15 under 35 U.S.C. §102(e) as being anticipated by Michael (US 2001/0043912 A1). The basis for this rejection was stated as follows:

With respect to claim 1-6, Michael discloses a hair care composition comprising non-ionic, hydrophobic thickener...a fatty alcohol... cationic surfactant...and non-volatile polysiloxane resin selected from group consisting of dimethicone copolyols...And also discloses the thickener PEG-modified triglycerides such as PEG-25 glyceryl trioleate...

With respect to claims 8-9, 12 and 13, Michael discloses the hair care composition comprising cationic polymer including cationic polysaccharide polymers, such as cationic cellulose derivatives as polyquaternium-10 and cationic starch derivative...The composition comprising thickener in an amount ranging from 0.02% - 1%, fatty alcohol from about 1% - 10%, cationic surfactant 0.1% - 3%, cationic polymer from about 0.5% - 10% and silicon from about 0.001% - 5%...

With respect to claims 14 and 15, Michael discloses hair-care composition encompass any composition form intended for human use on hair...[Office Action, p. 6]

Applicants respectfully request reconsideration of the foregoing rejection in view of the ensuing discussion.

As set forth above, applicants have canceled without prejudice claims 1-11, thus, they need not respond to the rejection substantively with respect to claims 1-6 and 8-9. Claims 12-15 require the presence of polyether-1. Michael nowhere mentions the use of polyether-1 as a thickener and, in fact, refers to cellulose-based polymers as being preferable for use in that role [Michael, ¶0098]. Applicants therefore respectfully request reconsideration of the rejection under 35 U.S.C. §102(e) in view of Michael.

The Office Action of July 23, 2007 rejected claims 1-15 under 35 U.S.C. §103(a) as being unpatentable over Newell et al. and Bertolosso et al. in view of Schmenger et al. The basis for this rejection is as follows:

Newell discloses a composition for lightening and highlighting hair as discussed above.

Bertolosso discloses a hair treatment composition comprising fatty alcohols such as cetyl alcohol, stearyl alcohol and mixtures thereof...cationic surfactants such as cetyltrimethylammonium chloride, behenyltrimethylammonium chloride, cetylpyridinium

chloride and thereof..., cationic polymers such as polyquaternium-10, polyquaternium 16 and thereof..., amino functionalized silicone such as amodimethicone..., and viscosity modifiers, preservatives, polyols such as glycerine and polypropylene glycol, antioxidants such as vitamin E acetate, fragrances and thereof...

Newell and Bertolosso meets the claim limitations as described above but fails to include polyether-1 in the hair treatment composition.

However, Schmenger discloses a hair treatment composition comprising thickener such as polyether-1. The composition can be used as a leave-in hair treatment or as a hair rinse condition the hair and confers to its luster and volume. Compositions of the invention show superior conditioning and also superior selectivity in conditioning performance. Further the use of nonionic amphiphilic associative thickeners such as polyether-1, in the composition provides conditioning effect in the best manner and shows improved emulsification during use. After the treatment, the hair, in both the moist and the dry state, is noticeably smoother, and the wet combability is noticeably improved.

When these references are taken together, one would have been motivated to extend Schmenger's teaching to add a polyether-1 thickener, which may provide esthetic properties and desirable physical properties to the compositions. As suggested by cited references, one would have reasonably expected successful addition of thickener (polyether-1) because the effectiveness, extra benefits (to improve the stylability, combability, luster and feel of the treated hair) and safety are already well proven and are well suggested by latter references cited. [Office Action, pp. 8-9]

Applicants respectfully request reconsideration of the foregoing rejection in view of the following discussion.

Applicants respectfully note that claims 1-11 have been canceled without prejudice, thus they will address their remarks to pending claims 12-17. With respect to Newell and Bertolosso, as admitted in the Office Action, neither suggests or describes compositions containing polyether-1 as a thickener, thus, applicants respectfully submit that neither would have led one of ordinary skill in the art to the compositions of applicants' invention.

Furthermore, applicants respectfully submit that the Schmenger et al. patent publication does not compensate for the deficiencies of Newell and/or Bertolosso in leading one of ordinary skill in the art to the compositions of applicants' invention. Kindly note that in this response, applicants will hereinafter refer to the Schmenger et al. patent, U.S. Patent Number 6,737,046, which corresponds to the cited WO0152800 publication cited in the Office Action.

Schmenger et al. relates to compositions for hair treatments that contain the following components: “(A) at least one nonionic, amphiphilic associative thickener in an appropriate cosmetic carrier and (B) at least one propellant.” [Schmenger et al., col. 2, l. 5-7]. The compositions set forth in Schmenger et al. were intended to avoid the disadvantages of previously-known hair conditioning compositions. As Schmenger et al. points out,

...common hair-conditioning preparations, such as rinse-off treatments or leave-on treatments, are formulated on the basis of aqueous emulsions. Essential ingredients are cationic substances, for example cationic surfactants, hydrophobic substances, for example fatty alcohols, and other oil components...The most important ingredients are the cationic surfactants, fatty alcohols and emulsifiers...The treated hair often feels somewhat heavier and more burdened which is not always desirable... [Schmenger et al., col. 1, l. 15-31]

The solution posed by Schmenger et al. was to combine the components set forth above, i.e., a nonionic, amphiphilic associative thickener and a propellant. Schmenger et al. states that these compositions compare favorably with compositions containing a fatty alcohol, as follows:

Surprisingly, we have now found that the thickener makes it possible to incorporate the cationic substances and the said silicone compound without bringing about the negative side effects of the thickener. The technical properties of the preparation of the invention even exceed those of a conventional hair treatment based on an aqueous emulsion of fatty alcohols and quaternary surfactants. Comparative beauty salon tests performed side by side on the same scalp confirmed the better combability and more natural feel of hair treated with the preparation of the invention. The negative, dull feel of hair treated with fatty alcohol/cationic surfactant mixtures is practically eliminated when the preparation of the invention is used. [Schmenger, et al., col. 2, l. 32-44]

In contrast, the compositions of applicants’ invention contain fatty alcohol plus surfactant ingredients, as well as polyether-1, yet do not require the presence of propellant in order to achieve the desired results. Applicants respectfully submit that this is unexpected in view of Schmenger et al. in that Schmenger et al. teaches that one must include a propellant *in addition to* a nonionic, amphiphilic associative thickener as opposed to fatty alcohol/surfactant mixtures in order to avoid the heaviness associated with earlier compositions. Applicants therefore respectfully request reconsideration of the rejection under 35 U.S.C. §103(a) in view of Newell, Bertolosso and Schmenger et al.

In view of the foregoing discussion, applicants respectfully request the reconsideration of the rejections set forth in the Office Action of July 23, 2007. An early allowance is earnestly solicited.

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